

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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ROBYN SMITH for DEVAN  
VANBRUNT, a Minor, by his Mother and  
Natural Guardian,

**Court File No.: 0:11-cv-01771  
(RHK/LIB)**

Plaintiff,

v.

BLITZ U.S.A. INC., WAL-MART  
STORES, INC., WAL-MART STORES  
EAST, LP, WAL-MART STORES EAST,  
INC., KINDERHOOK CAPITAL FUND II  
L.P., and KINDERHOOK INDUSTRIES,  
LLC,

Defendants.

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**DEFENDANTS KINDERHOOK CAPITAL FUND II, L.P.  
AND KINDERHOOK INDUSTRIES, LLC'S MOTION TO DISMISS OR, IN THE  
ALTERNATIVE, STAY**

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Defendants Kinderhook Industries, LLC and Kinderhook Capital Fund II, L.P. (together, the "Kinderhook Defendants") respectfully submit, by special appearance, this Motion to Dismiss the count of the First Amended Complaint alleged against them pursuant to Rules 12(b)(2) and 12(b)(6) of the Federal Rules of Civil Procedure or, in the alternative, Motion to Stay the claim pursuant to 11 U.S.C. § 362(a) and the Court's inherent power to manage its docket. The Kinderhook Defendants do not waive any rights or defenses to the lack of personal jurisdiction by this special appearance. The Kinderhook Defendants, Delaware companies based in New York, do not have the requisite minimum contacts with the State of Minnesota to justify

this Court's exercise of either general or specific jurisdiction over them. Should the Court determine that jurisdiction is proper in Minnesota, the Kinderhook Defendants move for dismissal pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure or, in the alternative, for the claim against them to be stayed.

Dated: March 29, 2012

By: s/Seth Leventhal

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